IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA NO.367 OF 2005

DATE OF DECISION: 6 .7.2007

M/s Ravinder Kumar Talwar & Co. ...Petitioner

VERSUS

State of Haryana and others ...Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.Joginder Pal Sharma, Advocate for appellant

Permod Kohli (Oral)

This Regular Second Appeal arises out of the judgment and decree dated 13.8.2004 passed by the Additional District Judge, Jagadhri dismissing the appeal of the present appellant/plaintiff against the judgment and decree dated 25.3.2002 passed by the Additional Civil Judge (Senior Division), Jagadhri.

The appellant/plaintiff filed suit before the trial court for permanent injunction restraining the defendants from effecting recovery of a sum of Rs.13,50,051/-. It is the admitted case of the parties that the appellant was a licencee of a Liquor Vend for the financial year 1991-92. Some recovery was sought to be effected from him on account of arrears of licence fee. It is stated that the

appellant/plaintiff, without challenging the recovery proceedings or even the demand or any other proceedings against him, filed suit for permanent injunction before the trial court that too, without serving any notice under Section 80 CPC. The suit was dismissed vide judgment and decree dated 25.3.2002 passed by the Additional Civil Judge (Senior Division), Jagadhri, being incompetent for not serving notice under Section 80 CPC which is mandatory for filing a suit against the State or/and its functionaries. The appeal preferred before the First Appellate Court also resulted in dismissal and the findings of the trial court were upheld.

In the present Regular Second Appeal, it is urged that earlier the appellant preferred a petition before this Court and he was advised to seek appropriate remedy, in view of the disputed questions of fact involved in the lis. The learned counsel for the appellant also submitted that since the State had the knowledge of the claim of the appellant, hence there was no necessity of serving notice under Section 80 of the CPC. I am unable to agree with the view of the learned counsel for the appellant. Service of notice under Section 80 CPC is sine quo non for filing a suit against the State and/or its functionaries. It is only in emergency that the notice can be dispensed with in terms of Section 80(2) CPC for which the plaintiff is required to seek leave of the court for filing the suit by seeking dispensation of service of notice under Section 80 CPC. Even this procedure of law has not been adopted in the present case. I am of the opinion that no substantial question of law is involved in the present appeal. I find no ground to interfere with the impugned judgment and decree.

In view of the above, I find no merit in this Regular Second Appeal which is accordingly dismissed.

(PERMOD KOHLI)
JUDGE

06.07.2007
MFK

NOTE: Whether to be referred to the Reporter or not:YES/NO